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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8166 OF 2016

Sulochanabai Laxman Kolhe
Age – 59 years, Occ – Household,
R/o Indira Path, Adjacent to the
Hospital of Dr. Adhav, Kopargaon,
District - Ahmednagar

PETITIONER

VERSUS

1. The State of Maharashtra
Through the District Collector,
District – Ahmednagar
2. Joint Director of the Town Planning,
Office of the Town Planning,
Savitribai Fule Sankul,
Sawedi, Ahmednagar,
District – Ahmednagar
3. The Chief Officer,
Municipal Council, Kopargaon,
Taluka – Kopargaon, District – Ahmednagar
4. Dr. Pritam Balasaheb @ Raosaheb Jape,
Age – 36 years, Occ – Medical Practic
R/o Jape Orthopedic Clinic,
Indira Path, Kopargaon,
Taluka – Kopargaon,
District – Ahmednagar

RESPONDENTS

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Mr. Milind Patil, Advocate for the petitioner
Mr. S. K. Tambe, AGP for respondent-State
Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Advocate for R-4

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 29th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.

2. The petitioner, who has instituted regular civil suit No.80 of 2014 in the court of Civil Judge, Senior Division, Kopargaon, seeking declaration and mandatory injunction against the defendants, including defendant No.4 - present respondent No.4 is before this court aggrieved by order dated 16th July, 2016 passed by Joint Civil Judge, Senior Division, Koparagaon on Exhibit-117.

3. While the petitioner had been before this court in writ petition No.2866 of 2016 earlier, division bench, under its order dated 3rd May, 2016 has directed as under -

“1. Heard. Mr. Patil, learned counsel submits that for almost 2 years, the application for injunction was not decided by the trial court and respondent No.4 has completed the construction also. In the light of that, at least now, the suit be directed to be disposed of expeditiously. It is submitted that the pleadings are complete.

2. We have also heard Mr. Hon, learned Senior Counsel for respondent No.4, Mr. M. M. Patil Beedkar, Advocate and learned AGP for respondent No.1.

3. *Considering that no interim orders are in operation, the learned trial Judge shall endeavour to dispose of the suit expeditiously, preferably within one year. Parties to cooperate in the expeditious disposal of the suit. Writ petition is accordingly disposed of. No costs.”*

4. Thereafter, the suit is being proceeded with and several applications on either side appear to have been filed.

5. Application Exhibit-117 has been moved by the petitioner, to take up hearing on applications Exhibits-6 and 8 and other applications viz., Exhibits 25, 43, 58, 66, 75, 100 and 101.

6. Mr. Milind Patil, learned advocate appearing for the petitioner vehemently contends that impugned order is an example of absolute non application of mind to underlying intention of the high court while passing order in writ petition No.2866 of 2016. He submits that it cannot be said that the direction for expeditious disposal of the suit has undertone of direction to overlook intervening stages involved in making the suit ready for hearing. The applications, in fact, are the stages, which generally and compulsively, intermediate, preparing the matter ready for hearing of a suit and without undergoing and complying with such stages a suit would not be considered to be ripe for hearing. He, therefore, submits that the impression,

which had been carried by trial court while passing the impugned order, is not only wholly misplaced but also is entirely erroneous.

7. Mr. Hon, learned senior advocate appearing for respondent No. 4 - defendant No.4, however, tries to look at the matter from a different angle. He submits that it is in fact a suit which has been filed by the petitioner and had, while the matter had been before the division bench in writ petition No.2866 of 2016, impressed upon the court that the petitioner is in tearing hurry for expeditious disposal of the suit. However, thereafter, it appears that petitioner's intention has undergone a sea change. According to learned senior advocate it appears to be a strategy of the petitioner to prolong and procrastinate the suit proceedings in order to cause obstacles in attaining the purpose for which construction has been carried out by defendant No.4 and to make use of pendency of the suit for the same. He submits, therefore, applications one after the other are being filed, which according to learned senior advocate, are estimated to lengthen life of the suit. He submits that, therefore, mischievously, once again despite the order passed by the division bench dated 3rd May, 2016, petitioner under Exhibit-117 makes reference to Exhibits-6 and 8, whereas a decision thereon

would be a foregone conclusion in the wake of the order passed by the high court in writ petition No.2866 of 2016. He submits that the mischievous intention can be gathered from the reliefs which are sought under application Exhibit-117. As a matter of fact said application was not called for, but had been deliberately filed and order has been obtained on the same with a view to take up matter before this court to further procrastinate the suit proceedings. He submits that it is intriguing as to why the petitioner should be eager to have decision on applications Exhibits-25 and 43, which do not concern him. As a matter of fact, looking at the intention to prolong, it is intriguing as to why petitioner has asked for decision on Exhibit-100.

8. One will have to take into consideration the applications on which hearing has been sought under Exhibit-117. Exhibits-25 and 43 appear to be applications by defendant No.4 – present respondent No.4 for production of documents. Exhibit-58 has been filed by the petitioner seeking rejection of counter claim. Parties do not appear to be aware exactly for what purpose Exhibit-66 has been filed. Exhibit-75 is injunction sought by defendant No.4 in his counter claim in the suit, whereas application Exhibit-100 is an application by present petitioner - plaintiff for production of documents and Exhibit-101 is for

taking up application Exhibit-100 for early hearing.

9. After hearing learned advocates for the parties, apparently, the submissions on either side may not be conducive to progress of the suit as would be required pursuant to order of the division bench. It will have to be borne in mind that the division bench did not intend to direct the court to jump over procedurally intervening stages. As a matter of fact, the period given for disposal of the suit implies, the court had taken notice of that intermediate stages would be consuming some time which are with a view to facilitate decision making on rights claimed by the parties.

10. As such, looking at the nature of the applications, which have been filed by present petitioner, hearing on which is being insisted upon, will have to be given due regard.

11. As far as application Exhibit-100 for production of documents is concerned, it is at an intermediate stage under the procedure. Applications Exhibit-25 and 43 are also for production of documents, the same may as well can be decided as would be in the case of Exhibit-100. As such, said exhibits be decided expeditiously, preferably within a fortnight from receipt of writ of this order. The same also to quite large extent sub-serves

intention underlying order passed by the division bench.

12. Application Exhibit-58 appears to be an application for rejection of counter claim before a stage wherein issues are yet to be framed. In the circumstances, there does not appear to be a hitch for decision thereon, which may in a way facilitate further course in a definitive direction.

13. Any orders on aforesaid exhibits, however, hereinafter would be looked up to by this court circumspectively, since parties may have sufficient opportunity, if they are aggrieved by order on these applications pursuant to section 105 of the Civil Procedure Code, if the orders are not appealable, under provisions of the Code of Civil Procedure. This is being observed in order to obviate further procrastination of litigation upon orders on these exhibits by the trial court. Though fate of Exhibit-75 would depend on order on Exhibit-58, it is not a matter which would be an intermediate stage for going ahead with direction of division bench.

14. In view of that Exhibits-6 and 8 were already part of writ petition and division bench having passed orders in writ petition No.2866 of 2016, as such, said Exhibits would stand precluded from consideration.

15. Writ petition, as such, is disposed of with following order.

i. Petitioner's applications Exhibits-58 and 100 be decided as early as possible, preferably, within a period of a fortnight from the date of receipt of writ of this order so would be the case in respect of applications Exhibits-25 and 43 filed by defendant No.4.

ii. Impugned order is maintained in respect of Exhibits-6 and 8.

iii. Rule is made absolute in aforesaid terms.

16. Aforesaid observations are for the purpose of disposal of the writ petition and would not carry efficacy any further. The observations shall not influence decision making on merits in the suit and the applications.

[SUNIL P. DESHMUKH, J.]